

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1908

No. 1849.

529

No. 18, SPECIAL CALENDAR.

JAMES H. JOHNSON, PLAINTIFF IN ERROR,

vs.

DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 28, 1907.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA
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In the Court of Appeals of the District of Columbia.

No. 1849.

JAMES H. JOHNSON, Plaintiff in Error,
vs.
DISTRICT OF COLUMBIA.

a Nos. 309,319 & 309,321, Consolidated.

In the Police Court of the District of Columbia, December Term,
1907.

DISTRICT OF COLUMBIA
vs.
JAMES H. JOHNSON.

Two Several Informations for Cruelty to Animals.

Be it remembered, That in the Police Court of the District of Columbia, at the City of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 No. 309,319.

(*Information.*)

In the Police Court of the District of Columbia, August Term, A. D.
1907.

THE DISTRICT OF COLUMBIA, ss:

Edward H. Thomas, Esq., Corporation Counsel, by James L. Pugh, Jr., Assistant Corporation Counsel, who, for the said District of Columbia prosecutes in this behalf in his proper person, comes here into Court, and causes the Court to be informed and complains that James H. Johnson, late of the District of Columbia aforesaid, on the 9th day of August in the year A. D. nineteen hundred and seven, in the District of Columbia aforesaid, did then and there cruelly work and cause to be worked a certain animal of the horse kind, said horse being unfit for service being weak; contrary to and in violation of an Act of the late Legislative Assembly of the District

of Columbia, approved August 23, 1871; and constituting a law of the District of Columbia.

EDWARD H. THOMAS,
Corporation Counsel,

By JAMES L. PUGH, JR.,
Assistant Corporation Counsel.

Personally appeared J. M. Guishon, this 10th day of August, A. D. 1907, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

J. B. PEYTON,
Deputy Clerk, Police Court of the District of Columbia.

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No. 309,321.

(Information.)

In the Police Court of the District of Columbia, August Term, A. D. 1907.

THE DISTRICT OF COLUMBIA, ss:

Edward H. Thomas, Esq., Corporation Counsel by James L. Pugh, Jr., Assistant Corporation Counsel, who, for the said District of Columbia prosecutes in this behalf in his proper person, comes here into Court, and causes the Court to be informed and complains that James H. Johnson, late of the District of Columbia aforesaid, on the 9th day of August in the year A. D. nineteen hundred and seven, in the District of Columbia aforesaid, did then and there cruelly work and cause to be worked a certain animal of the horse kind, said horse being unfit for service, and having a sore shoulder; contrary to and in violation of an Act of the late Legislative Assembly of the District of Columbia, approved August 23, 1871; and constituting a law of the District of Columbia.

EDWARD H. THOMAS,
Corporation Counsel,

By JAMES L. PUGH, JR.,
Assistant Corporation Counsel.

Personally appeared J. M. Guishon, this 10th day of August, A. D. 1907, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

J. B. PEYTON,
Deputy Clerk, Police Court of the District of Columbia.

3 *(Motion in Arrest of Judgment.)*

In the Police Court of the District of Columbia.

Nos. 309,319 & 309,321, Consolidated.

DISTRICT OF COLUMBIA

vs.

JAMES H. JOHNSON.

Now comes the defendant by his attorneys and moves the Court to arrest the judgment in the above entitled cause because the informations upon which said prosecutions were held are defective for the reasons following, to wit:

1. That the Act of 1871 of the Legislative Assembly of the District of Columbia under which the prosecution of this cause was had never had any effect in law.

2. That the Act of 1871 of the Legislative Assembly of the District of Columbia has been repealed by Sec. 1636 of the Code of the District of Columbia.

HAYDEN JOHNSON,
THOS. H. PATTERSON,
Attorneys for Defendant.

James L. Pugh, Assistant Corporation Counsel:

Please take notice that the above motion will be called to the attention of Mr. Justice Mullowny presiding in the District branch of the Police Court on Friday, the 6th day of December, 1907, at 9 o'clock, A. M., or as soon thereafter as counsel may be heard.

HAYDEN JOHNSON,
THOS. H. PATTERSON,
Attorneys for Defendant.

4 In the Police Court of the District of Columbia.

Nos. 309,319, 309,321, Consolidated.

DISTRICT OF COLUMBIA

vs.

JAMES H. JOHNSON.

Bill of Exceptions.

Be it remembered that these two causes came on for trial before the Honorable Alexander R. Mullowney, presiding justice, and a jury on the 5th day of December, 1907, at which time upon motion of James L. Pugh, Assistant Corporation Counsel for the District of Columbia, the two cases were consolidated and tried as one cause.

Thereupon the District of Columbia to maintain the issue on its part joined called as a witness J. M. GUICHON who testified in sub-

stance as follows: That as an Agent of the Washington Humane Society, on the 9th day of August, 1907, in company with Harry Atchison, a veterinary surgeon, he went to examine into the condition of a certain horse belonging to the defendant James H. Johnson, which horse it had been suggested to the said witness was suffering from an injury to one of its feet; that he found the horse which he was seeking, together with certain other horses belonging to the defendant harnessed to a wagon at a certain building in the City of Washington, District of Columbia, which said building was being pulled down and the material and debris from same being hauled away by defendant's team; that hitched to a wagon together with the aforesaid horse having an injured foot was another horse in a very weak condition; that this last mentioned horse was all

5 drawn up and looked like it had corsets on; that something seemed to be the matter with his hind legs so that it could scarcely stand up, and the said horse was unfit for service at that time; that witness also examined another horse belonging to defendant and found that it was suffering from a fistula, or growth upon the top of its shoulder; that said growth *being* about one half the size of a foot ball; that no corruption was running from this growth nor was any skin off, but that it was sore and rendered the horse unfit for service.

The District of Columbia further to maintain the issue on its part joined called the aforementioned HARRY ATCHISON, who testified that he was a veterinary surgeon and that on the 9th day of August, 1907, in company with witness Guichon, he went to investigate the condition of a horse belonging to the defendant, James H. Johnson, and that while making this investigation, at the place designated by the witness Guichon, he saw and examined the two horses belonging to defendant described by witness Guichon, and that he found these horses in substantially the same condition as described by said witness.

Thereupon the District of Columbia rested.

That thereupon the defendant to maintain the issue on his part joined, testified on his own behalf as follows: that *the* he was the defendant in the cause, and owned the two horses, the condition of which has been described by the witness for the District of Columbia; that the horse which the said witness claimed to have been in a weak and emaciated condition was in a fit condition for use; that some-
6 time about the 1st of June, 1907, this horse suffered a sun-stroke, whereupon the defendant took it from work and allowed it to recover; that this caused the lack of flesh which the witness- for the District observed, and that the drawn up appearance of the body of this horse, and the peculiar shape of its legs, were natural in that animal, it having always been in that condition; that said horse suffered no pain, and was wholly fit for work; that the horse which the witnesses for the District of Columbia claimed to be suffering from a growth upon the top of its shoulders or withers had been in that condition for several months; that it suffered no

pain as a result of this growth; that he had the collar so padded and adjusted that neither could press upon this fistula or growth; that on the 29th day of August, 1907, a Doctor Buckingham, a veterinarian, residing in the District of Columbia, removed this growth from the horse's shoulder; that the horse had fully recovered; that at the time complained of the horse was in a fit working condition, and suffered no pain.

The defendant further to maintain the issue on his part joined called one JAMES HUGHES, who testified that he was the stable foreman of defendant, and had been working for him for several years; that he had full knowledge of the condition of all of the defendant's horses; that on the 9th day of August, 1907, he examined the horses of defendant and found them all fit for work; that the horse which the witnesses for the District of Columbia testified was weak and unfit for work was in a good working condition, and the peculiar shape described by witnesses was natural to this horse; that he had full knowledge of the condition of the horse of the defendant
7 which had the fistula or growth upon the top of its shoulders, and that this fistula or growth gave the horse no pain, he having frequently pressed the flesh of this enlargement between his hands in order to see if it did occasion the horse pain, and that the horse never flinched or gave any other indication of suffering therefrom; that the harness was always so adjusted that it could not press upon this growth, and that the horse was entirely fit for work.

The defendant further to maintain the issues on his part joined called one AUGUSTUS JOHNSON, who testified in substance as the last named witness.

Thereupon the defendant rested.

The District of Columbia thereupon in rebuttal called the aforesaid HARRY ATCHISON, who testified that it would have been impossible to press upon the growth upon the horse's shoulder in the manner indicated by the defendant's witness Hughes without causing pain to the horse; that the horse could not have been so harnessed that the collar would not press upon the growth or fistula.

The foregoing is the substance of all the testimony offered in this cause.

And thereupon the defendant James H. Johnson through his counsel prayed the court to instruct the jury upon all the evidence in the case to return a verdict of not guilty, for the reason that the act of the legislative assembly of 1871 under which said prosecution was brought, never had any force or effect in law, because the said legislative assembly was illegally created, and for the further reason that if said act of 1871 ever had any force or validity
8 in law, it was repealed by the provisions of section 1636 of the Code of Law of the District of Columbia; that the presiding justice overruled said motion and submitted said case to the jury, to which ruling on the part of the court, the defendant through

his counsel then and there excepted for the reasons above stated in order to present the point to the Court of Appeals. That all of the foregoing proceedings were had and all exceptions hereinbefore mentioned were made before the jury retired to consider its verdict, and thereupon the defendant prayed the court to sign and seal this his bill of exceptions, to have the same force and effect as if each of the said exceptions were severally set forth in a separate bill of exceptions, and the same was accordingly done, and the court signs and seals this bill of exceptions to have the same effect aforesaid, now for then, this 9th day of December, A. D., 1907.

ALEX. R. MULLOWNY, [SEAL.]

Judge, Police Court.

[Endorsed:] In Police Court of District of Columbia. District of Columbia *vs.* James H. Johnson. Nos. 309,319, 309,321, Consolidated. Bill of Exceptions. Hayden Johnson, Thos. H. Patterson, Att'ys for Def't.

9

(Copy of Docket Entries.)

No. 309,319, Consolidated with No. 309,321.

In the Police Court of the District of Columbia, August Term, 1907.

DISTRICT OF COLUMBIA

vs.

JAMES H. JOHNSON.

Information for Cruelty to Animals.

Defendant arraigned Saturday, August 10, 1907. Jury trial demanded. Continued indefinitely. Recognizance in the sum of two hundred dollars entered into to appear in the Police Court, D. C., Richard L. Elliott, surety.

December 5, 1907.—Jury impaneled and sworn to try the issue joined.

Exceptions taken to the ruling of the Court on matters of law and notice given by the defendant in open Court at the time of the several rulings of his intention to apply to a Justice of the Court of Appeals of the District of Columbia for a writ of error.

Verdict: Guilty. Continued to December 7, 1907.

December 6, 1907.—Motion in arrest of judgment filed.

December 7.—Judgment: Guilty. Sentence: To pay a fine of ten dollars, and, in default, to be committed to the workhouse for the term of thirty days. Bill of exceptions filed. Motion in arrest of judgment filed.

Recognizance in the sum of two hundred dollars entered into on writ of error to the Court of Appeals of the District of Columbia upon the condition that in the event of the denial of the application for a writ of error the defendant will, within five days next after the expiration of ten days, appear in the Police Court and abide

by and perform its judgment, and that in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. Richard L. Elliott, surety.

Motion in arrest of judgment argued and overruled.

December 9, 1907.—Bill of exceptions settled and signed.

December 13, 1907.—Writ of error received from the Court of Appeals of the District of Columbia.

10

(Copy of Docket Entries.)

No. 309,321, Consolidated with No. 309,319.

In the Police Court of the District of Columbia, August Term, 1907.

DISTRICT OF COLUMBIA

vs.

JAMES H. JOHNSON.

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December 9, 1907.—Bill of exceptions settled and signed.

December 13, 1907.—Writ of error received from the Court of Appeals of the District of Columbia.

11 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

I, Joseph Y. Potts, Clerk of the Police Court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 10 inclusive, to be true copies of originals in causes Nos. 309319 & 309321 wherein the District of Columbia is plaintiff and James H. Johnson defendant as the same remain upon the files and records of said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, — the City of Washington, in said District, this 27th day of December, A. D. 1907.

[Seal of Police Court of the District of Columbia.]

JOSEPH Y. POTTS,

Clerk Police Court, Dist. of Columbia.

12 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable Alexander R. Mullooney, Judge of the Police Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Police Court, before you, between District of Columbia, plaintiff, and James H. Johnson, defendant, (Informations Nos. 309319 and 309321 consolidated) a manifest error hath happened, to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Seth Shepard, Chief Justice of the said Court of Appeals, the 13th day of December, in the year of our Lord one thousand nine hundred and seven.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,

*Clerk of the Court of Appeals of the
District of Columbia.*

Allowed by

SETH SHEPARD,

*Chief Justice of the Court of Appeals
of the District of Columbia.*

Endorsed on cover: District of Columbia police court. No. 1849. James H. Johnson, plaintiff in error, vs. District of Columbia. Court of Appeals, District of Columbia. Filed Dec. 28, 1907. Henry W. Hodges, clerk.

